



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 5, 2005

Mr. Scott A. Kelly  
Deputy General Counsel  
Office of the General Counsel  
The Texas A&M University System  
200 Technology Way, Suite 2079  
College Station, TX 77845-3424

OR2005-02887

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221431.

Texas A&M University (the "university") received a request for a named employee's "sent and received emails from Nov. 26 through Dec. 6." You inform us that the university will withhold student-identifying information. *See* Open Records Decision No. 634 (1995) (concluding that educational agency or institution may withhold information protected by Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and sections 552.026 and 552.114 without necessity of requesting attorney general decision as to those exceptions). You claim that a portion of the remaining submitted information is excepted from disclosure under section 552.137 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note and you acknowledge that the university has not complied with the procedural requirements of section 552.301 of the Governmental Code in requesting this ruling because you failed to submit the required information within ten business days of receiving the request. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex.

App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.137 of the Government Code can provide a compelling reason to overcome the presumption of openness. Therefore, we will address your argument.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). We note that section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. We also note that section 552.137 does not apply to a business's general e-mail address or website address.

The e-mail addresses you have marked, and additional ones that we have marked, do not appear to be of a type specifically excluded by section 552.137(c). Therefore, the university must withhold such e-mail addresses in accordance with section 552.137 unless the university receives consent for their release. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll

free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Elizabeth A. Stephens  
Assistant Attorney General  
Open Records Division

EAS/krl

Ref: ID#221431

Enc. Submitted documents

c: Mr. Stefan C. Stevenson  
400 West 7<sup>th</sup> Street  
Fort Worth, TX 76102  
(w/o enclosures)